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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/138,807
Filing Date: August 21, 1998
Appellant(s): RAMANATHAN, RAMANATHAN

Rhonda L. Sheldon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/15/2007 appealing from the Office action mailed 7/12/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct

(4) Status of Amendments After Final

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Kenner et al. (U.S. Patent No. 5,956,716)

Echeita et al. (U.S. Patent No. 5,826,165)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 12-18, 20-23, 25-34 and 36-42 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kenner et al. (U.S. Patent No. 6,956,716).

Referring to claim 12, Kenner discloses a transmission system (**Figure 1**) comprising an encoder (**see content provider region 91 in Figure 4 and Column 21,**

Lines 6-14) that combines different transmissions to a plurality of receivers (**see Column 4, Lines 36-46 and Column 27, Line 64 through Column 28, Line 7 for transmitting video clips coupled with corresponding database information (thereby combining different transmissions) and Figure 1 for teaching a plurality of user terminals (14 and 48)**).

Kenner also discloses a device that sets a first marker in the transmission (**see Column 28, Lines 1-5 for a software tool at the content provider setting a first marker (video ID) in the transmission (video clip)**).

Kenner also discloses a counter to track the transmission (**see Column 13, Lines 55-67 for a counter (SRU Access Count Rate) that tracks the transmissions (video clips) over the network system**) from the time a handle to the first marker is obtained (**see Column 15, Lines 35-44 for creating the data structure containing the counter, thereby creating a handle to a first marker (the data structure for each video clip (with video ID) stored in a particular database)**), said handle to enable said first marker for tracking (**see Column 16, Lines 57-59 for tracking each video clip (with video ID) by updating the data structure, therefore the handle (data structure) enables the first marker (video ID) to be tracked throughout the network system**).

Referring to claim 13, Kenner discloses a content provider and a broadcast encoder coupled to said content provider (**see content provider section 91 in Figure 4, which provides PIM 22 (or any IM, such as IM 90) and DSI 30, which represents**

a content provider and broadcast encoder, respectively). *The examiner notes that the content provider 90 of Kenner contains multiple components all of which could be considered to be a content provider and broadcast encoder in many different combinations.*

Referring to claim 14, Kenner discloses that the broadcast encoder sets the first marker in a video transmission (**see content provider 90 in Figure 1 and note Column 27, Line 64 through Column 28, Line 7 for the content provider 90 (which contains multiple components that be interpreted as the broadcast encoder) containing a software tool for inserting the Video ID into the video transmission (video clip)**).

Referring to claim 15, Kenner discloses that the content provider sets the first marker in a video transmission (**see content provider 90 in Figure 1 and note Column 27, Line 64 through Column 28, Line 7 for the content provider 90 containing a software tool for inserting the Video ID into the video transmission (video clip)**).

Referring to claim 16, Kenner discloses an article comprising a medium for storing instructions that cause a computer to (**see Figures 1-4**) set a first marker in a transmission (**see Column 28, Lines 1-5 for a software tool at the content provider setting a first marker (video ID) in the transmission (video clip)**).

Kenner also discloses calling one method to provide a handle to said first marker (**Column 15, Lines 35-44 for creating the data structure containing the counter, thereby calling a method to provide a handle to said first marker (the data structure for each video clip (with video ID) stored in a particular database)**).

Kenner also discloses in response to providing said handle, track the on-going transmission from said first marker (**see Column 16, Lines 57-59 for tracking each video clip (with video ID) by updating the data structure, therefore the handle (data structure) enables the first marker (video ID) to be tracked throughout the network system**).

Kenner also discloses at any time after said handle is provided (**note that at Column 16, Lines 57-59 for continually updating the SRU access counter in the database**), call a method other than said one method (**see Column 14, Lines 57-62 for using the access rate data for a second software process in the form of network storage management logic**), said other method to obtain tracking information relative to said first marker (**see Column 31, Lines 6-52 for tracking the number of times video clips (with video IDs/first markers) have been accessed**) without terminating said tracking from said first marker (**see Column 31, Lines 6-7 for the tracking being maintained for each video clip downloaded from the SRU, therefore the tracking is not terminated**), said tracking information current as of the time said other method is called (**see Column 31, Lines 7-10 for the tracking information being current from the conclusion of the last file transfer, therefore the tracking information is current as of the time the other method was called, because the first method is**

the creation of the video clip being stored as well as the database information corresponding to each video clip, therefore continually receiving performance information is current after the information was created).

Referring to claim 17, Kenner discloses receiving web content transmissions and accompanying television broadcasts from a content provider (**see Column 23, Lines 15-20 for receiving a video guide in the form of web content transmissions with describe accompanying television broadcasts from a content provider (see Column 23, Lines 3-7)**).

Referring to claim 18, Kenner discloses instructions that cause the computer to receive a web content broadcast (**see Column 23, Lines 3-7 for receiving web pages**) with the first marker inserted within the broadcast data (**see Column 23, Lines 32-36 and Lines 42-44 for the web pages containing an EMBED tag that contains the video ID**), and combine the web content broadcast with a television broadcast and transmit the combined broadcast (**see Column 23, Lines 15-20**).

Referring to claim 20, Kenner discloses transmitting said transmission to a plurality of receivers (**see Figure 1 and Column 25, Lines 46-48 for multicasting a clips to a plurality of users**) to display on a display device (**see Column 21, Lines 20-24**).

Referring to claim 21, Kenner discloses providing a continuous data stream (**see Column 31, Lines 59-61 for a video clip (continuous data stream) comprising one or more segments**), and setting a first marker and a second marker in said stream (**see Column 31, Line 65 through Column 32, Line 5 and Column 32, Lines 38-40 for treating segmented portions of video clips in the same manner as unsegmented video clips, where all the segments contain video IDs and index information (first and second markers)**), and associate said second marker with a second handle (**see Column 33, Lines 4-20 for each segment also having a handle (location for the segment to be stored in the database where each segment can be accessed according to the video ID and location of the video segment clip stored in the database, therefore a first, second, third, etc. video clip segment can contain a marker (video ID) and a handle (location stored in the database, which is used for future retrieval)**).

Referring to claim 22, Kenner discloses calling a method to provide transmission details and the handle (**see Column 31, Lines 6-32 for obtaining performance information based on accessed video clips, which also provides the current location of the video clip, in order to move the video clip to it's proper future location so that load balancing can be performed on the server's that store the video clips**).

Referring to claim 23, Kenner discloses allowing first and second markers to be accessed separately using separate handles so that transmission details associated with different portions of a data transmission can be obtained (**see the rejection of claims 21 for providing multiple segmented video clips that together comprise an entire video clip and note again Column 31, Lines 6-52 for obtaining transmission details for each video clip and moving the video clip to another server if necessary**).

Referring to claim 25, Kenner discloses including instructions to cause the computer to report the transmission (**see Column 12, Lines 57-58 and Lines 62-64 of reporting the access information from the DSI 30 back to the PIM 22**).

Referring to claim 26, see the rejection of claim 16.

Referring to claim 27, Kenner discloses that the on-going tracking includes counting bits transmitted (**see Column 22, Lines 11-45 for the PIM 64 maintaining information about all of the video clips, which includes the size of the file (number of bits) and the usage count, therefore, everytime a user accesses the video clip, the usage count is updated, and the in accordance with the size of the file (the number of bytes), everytime the usage count is updated, the number of bits (bytes that make up the file size) are inherently counted**), and also discloses that on-going tracking includes an elapsed time from the time when the first marker is

transmitted (**see Column 27, Lines 54-61 for determining the elapsed time of a test packet**). *Further note that Kenner also teaches that the PIM also separately stores usage information at Column 22, Lines 38-40, which tracks the historical frequency of a clip across days and hours, thereby determining an elapsed time (time passed between each video clip access) from the time of creation (Column 22, Lines 34-35).*

Referring to claims 28-29, see the rejection of claims 17-18, respectively.

Referring to claim 30, see the rejections of claims 14 and 18.

Referring to claims 31-32, see the rejection of claims 16 and 21, respectively.

Referring to claim 33, see the rejection of claim 22 and further note that Kenner discloses after performing the dynamic load management process (**see above**) terminating a handle when a video clip is moved to a different SRU server and the access list is updated in the index manager's database (**see Column 5, Lines 35-36**).

Referring to claim 34, see the rejection of claim 23.

Referring to claim 36, see the rejection of claim 16.

Referring to claim 37, see the rejection of claim 16.

Referring to claim 38, see the rejection of claim 21.

Referring to claim 39, see the rejection of claim 33 and further note that in regards to the limitation, "calling a third method other than said first and second

methods", the examiner notes that each video clip that is accessed and triggers the load balancing process described at Column 31, Lines 6-52, therefore, a first, second, third and possibly more methods can be called to determine transmission details involving determining if a video clip should be moved according to the number of times it has been accessed.

Referring to claims 40-42, see the rejection of claims 23, 18 and 30, respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 35 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Echeita et al. (U.S. Patent No. 5,826,165).

Referring to claim 35, Kenner discloses all of the limitations in claim 26, as well as a log-in server (**PIM 64 in Figure 4**) which contains reported data of transmission details of video clips (**see Column 21, Lines 43-46**), but is silent for allowing a third party to access said log-in server to receive transmission reporting.

Echeita discloses an Ad Agency Reconciliation Computer (**log-in server**), which receives reporting data on videos that are transmitted to a user and a Billing Accounts

System (**third party**), which has access to the log-in server to receive the reported data (**see Figure 1 and Column 6, Lines 1-10**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the video transmission system, as taught by Kenner, using the reconciliation and billing system, as taught by Echeita, for the purpose of utilizing reconciliation data to finalize the sale and initiate billing of the client for receiving services (**see Column 3, Lines 13-14 of Echeita**).

Referring to claim 43, see the rejection of claim 35.

(10) Response to Argument

A. Are claims 12-18, 20-23, 25-34, and 36-42 anticipated under 35 U.S.C. § 102(e) by Kenner (U.S. Patent No. 5,965,716)?

1. Claims 12, 13 and 15

In regards to claim 12, Applicant argues that Kenner does not teach tracking the transmission of a video clip *from the time a data structure is created*, therefore Kenner fails to teach a counter to track the transmission from the time a handle to the first marker is obtained.

The examiner disagrees and notes that Kenner teaches a video clip storage and

retrieval system that places markers in the form of a [Video ID] into video transmissions (**see Column 28, Lines 1-17 for inserting a [Video ID] into multiple video clips that are transmitted to viewers**). The system further contains a PIM (**Primary Index Manager 22**) that the viewer communicates with in order to request a video clip (**see Column 8, Lines 14-25 for requesting a video clips from PIM 22 and retrieving the video clips from an extended SRU 38 or local SRU 18 that stores the video clips**).

The PIM 22 is the heart of the video clip search and retrieval system. Note that Column 10, Line 10 through Column 11, Line 24 details the various software functions that is contained within PIM 22. The examiner specifically notes that at Column 11, Lines 14-17 that PIM 22 teaches "*searching through the "Audio-Visual Data Index" (described below) to identify the video clips that have been accessed most frequently*". Therefore, Kenner clearly teaches that PIM 22 is capable of tracking a video transmission. The question remains is how does Kenner teach "*a counter to track the transmission from the time a handle to the first marker is obtained, said handle to enable said first marker for tracking*".

First, the examiner would like to clarify how a handle to a first marker is being interpreted. Applicant's specification teaches an object oriented type software environment that contains various subroutines/functions used to track video transmissions. Note that when a the user wishes to begin tracking a video program a variable is defined and the subroutine/function is called, such as the GetTransmissionDetails() function. Commonly when a subroutine is called in an object oriented programming environment, the defined variable ('x') is specified to be equal to

the GetTransmissionDetails() function, thereby specifying that the end result of the subroutine (**after execution has completed**) equals the value of the executed subroutine. For example, if a programmer wrote x = GetTransmissionDetails(), the end result (**after execution of the subroutine/function is complete**) could be 9ms.

With this knowledge of software subroutines, the examiner has equated Kenner's PIM 22 creating multiple DSI 30 programs (**see Column 12, Lines 5-7**) to be equivalent to a subroutine/function call of Applicant's teachings in the instant application.

As disclosed by Kenner, multiple DSI 30 are created by the PIM 22 (**see Column 12, Lines 5-7**) and that when a DSI 30 is created, the DSI 30 contains multiples portions including a PIM interface (**see Column 12, Lines 36-38**). Using the PIM interface, the DSI can receive and report back to the PIM 22 (**see Column 12, Lines 59-64**). Further note that when a viewer wishes to retrieve a video clip (**see Column 16, Line 14 through Column 17, Line 33**) a DSI 30 is created by PIM 22 (**therefore creating a handle to a first marker, wherein the first marker is the [Video ID] field in a video clip**) and is used to not only find the proper SRU to deliver the video clip from (**see Column 16, Lines 47-53**), but also updates the SRU access counter **and** transmits this information to the PIM 22 for use in monitoring demands on the SRUs (**see Column 16, Lines 57-59**), thereby teaching that from the time the handle to the first marker is obtained (**the PIM 22 creating the DSI 30**) the counter tracks the transmission (**see again Column 16, Lines 57-59 for the SRU access counter in DSI 30 being updated**). The examiner notes that clearly these passages teach that once the PIM 22 creates DSI 30 tracking occurs ***from the time*** the DSI 30 was

created/obtained. Note that the claim limitations ***from the time a handle to the first marker is obtained*** are broad and that any tracking that occurs is clearly ***from the time of creation*** could be applied as a broadest reasonable interpretation.

Applicant also notes that DSIs 30 are destroyed immediately after the video data has been downloaded. The examiner notes that this is irrelevant and that this does not exclude the DSIs 30 from updating a counter and reporting this information back to the PIM 22, therefore maintaining a counter not only at the DSI 30, but also the PIM 22. Furthermore this portion of Kenner that has been cited by the Applicant (**Column 12, Lines 14-18**) only states that the DSI instance within the PIM is destroyed, and that the DSI remains resident in the extended and local components in order to collect, manage and buffer data which is transmitted from extended, remote and local SRUs (**see Column 12, Lines 5-13**). The examiner believes that Applicant has argued this point because if DSI 30 is created by PIM 22 and then destroyed after being transferred to the SRUs, then how can tracking commence ***from the time a handle to the first marker is obtained***. Again, the claim limitations are broad and since Kenner discloses creating a DSI 30 in response to a video (**with a specific [Video ID]**) being requested (**wherein the DSI 30 includes the [Video ID] (see Column 15, Lines 35-41**)) and the DSI 30 includes counter used to report the counter information back to the PIM 22, therefore tracking has clearly taken place ***from the time*** (**some time after creation of a DSI 30 is performed**) the PIM 22 had created the DSI 30.

The examiner notes that even if a gap of time between creation and tracking was relevant to the interpretation of the claim, the claim limitations are so broad that the

examiner could interpret the SRUs receipt of a DSI 30 as the counter to track the transmission from the time a handle to the first marker is obtained. Upon receipt of a DSI 30 at an SRU, the SRU would inherently store the DSI 30 which includes the SRU access counter field (**the counter**) and the [Video ID] field, which continuously tracks and reports information to the PIM 22. Upon the SRU receiving and storing the DSI 30, the SRU now has obtained not only the [Video ID], which represents obtaining a handle to a first marker, but further contains a counter that is used to track the transmission upon receipt. Therefore, upon receipt and storage of a DSI 30 at an SRU, the SRU Access Count Rate field resides on the SRU and is ready to be updated from the time a handle to the first marker is obtained (storage at the SRU).

Furthermore, Kenner even states that alternatively the DSI can be hosted by the PIM itself (**see Column 25, Lines 37-41**). In view of these arguments, the examiner notes that Kenner clearly teaches "***a counter to track the transmission from the time a handle to the first marker is obtained***".

Applicant further argues that Kenner does not state that the DSI's report to the PIM regarding the (SRU Access Count Rate) or (SRU Under-run Count Rate) includes the identifier for that particular video clip and that the database that this information is communicated to does not associate the count rates for each SRU with a particular video clip. Therefore, the (SRU Access Count Rate) merely monitors how often during a predetermined time interval that a particular SRU is used for video delivery in general without regard to a particular video clip.

The examiner notes that the claim limitations are broad and simply state that a counter is used to track the transmission. Clearly since the SRU is responsible for transferring the video clip to the viewer and the DSI 30 clearly tracks the usage information regarding this transaction (**note again Column 16, Line 14 through Column 17, Line 34**), therefore this is representative of the transmission as well as many other transmissions including the transmission. Also, in regards to the teachings of updating the SRU access counter at Column 16, Lines 57-59, note that the SRU access counter is clearly updated in response to a single transmission being requested (**see Column 16, Lines 14-23 for the user making a single query and Column 16, Lines 57-59 updating the SRU access counter in response to this query**), therefore the transmission is clearly being tracked by the counter.

Regardless, as stated above by the examiner and in addition to the SRU list database maintained by PIM 22, the PIM 22 maintains multiple databases, which includes (**in addition to the SRU list at Column 13, Lines 55-65**) the "audio-visual data index" database which clearly teaches identifying individual video clips and their respective locations and also tracks the Usage Count Rate (**how many times a video clip has been requested**). In addition, Kenner clearly discloses that the PIM 22 receives this usage information from the DSI 30 at Column 17, Lines 12-30 and is used to determine when to offload video clips from an overloaded SRU to a lightly loaded SRU.

Applicant also argues that the claim recites *the time* a handle to the first marker

is obtained and that "the time" indicates a particular time, which in this case is when the handle is obtained. Applicant further notes that as is explained above, any alleged tracking (counting) by a counter does not begin from the time the data structure is created and that the (SRU Access Count Rate) is updated after successful video clip delivery.

Again, the claim limitations are broad and since Kenner discloses creating a DSI 30 in response to a video (**with a specific [Video ID]**) being requested (**wherein the DSI 30 includes the [Video ID] (see Column 15, Lines 35-41**)) and the DSI 30 includes counter used to report the counter information back to the PIM 22, therefore tracking has clearly taken place ***from the time*** (**some time after creation of a DSI 30 is performed**) the PIM 22 had created the DSI 30.

The examiner notes that even if a gap of time between creation and tracking was relevant to the interpretation of the claim, the claim limitations are so broad that the examiner could interpret the SRUs creation/receipt of a DSI 30 as the counter to track the transmission from the time a handle to the first marker is obtained. Upon receipt of a DSI 30 at an SRU, the SRU receives/stores the DSI 30 which includes the SRU access counter field (**the counter**) and the [Video ID] field (**note Column 12, Lines 26-29 for creating a DSI 30 at a specified location (SRU) where the video clips reside**), which continuously tracks and reports information to the PIM 22. Upon the SRU receiving and storing the DSI 30, the SRU now has obtained not only the [Video ID], which represents obtaining a handle to a first marker, but further contains a counter that is used to track the transmission upon receipt. Therefore, upon receipt and storage

of a DSI 30 at an SRU, the SRU Access Count Rate field resides on the SRU and is ready to be updated from the time a handle to the first marker is obtained (storage at the SRU).

Furthermore, Kenner even states that alternatively the DSI can be hosted by the PIM itself (**see Column 25, Lines 37-41**). In view of these arguments, the examiner notes that Kenner clearly teaches "***a counter to track the transmission from the time a handle to the first marker is obtained***".

2. Claim 14

Applicant argues that only the content provider uses the software tool to assign a video ID, the broadcast encoder does not set the video ID. The examiner notes that the broadcast encoder (**used by the content provider**) is being interpreted as the software tool, because the software tool is used to encode the broadcast. Therefore, Kenner clearly teaches both a content provider (**stated verbatim by Kenner**) and a broadcast encoder (**software tool discussed at Column 27, Line 64 through Column 28, Line 5**).

3. Claims 16, 20 and 25

Applicant argues that Kenner does teach tracking an ongoing transmission from a first marker in response to providing a handle. Applicant also argues that because

video clips are stored on SRUs and the video clips remain in storage until an SRU is queried that can deliver the video clip, therefore the video is not continuously transmitted when the data structure is first created.

The examiner disagrees and notes that Kenner clearly teaches the PIM 22 creating a DSI 30 and using the DSI 30 to track the transmission of a specific video clip (with a specific [Video ID]) at a particular SRU (**see rebuttal above**). At Column 16, Lines 42-44, PIM 22 creates a DSI 30 upon the user requesting to video a video clip. In response to the creation of the DSI 30, Column 16, Lines 57-59 further teaches that once a video clip has been located and transmitted from an SRU, the SRU access counter is updated. Therefore, upon the user requesting transmission of a video clip, a DSI 30 is created and the DSI 30 tracks the on-going transmission of the video transmission from one SRU to another, and when completed updates a counter to confirm that a transmission has taken place, thus teaching that a transmission has been tracked, on-going from the time the DSI 30 is created (**provision of a handle to the first marker/[Video ID]**).

The examiner notes that even if a gap of time between creation and tracking was relevant to the interpretation of the claim, the claim limitations are so broad that the examiner could interpret the SRUs creation/receipt of a DSI 30 as the counter to track the transmission from the time a handle to the first marker is obtained. Upon receipt of a DSI 30 at an SRU, the SRU receives/stores the DSI 30 which includes the SRU access counter field (**the counter**) and the [Video ID] field (**note Column 12, Lines 26-29 for creating a DSI 30 at a specified location (SRU) where the video clips**

reside), which continuously tracks and reports information to the PIM 22. Upon the SRU receiving and storing the DSI 30, the SRU now has obtained not only the [Video ID], which represents obtaining a handle to a first marker, but further contains a counter that is used to track the transmission upon receipt. Therefore, upon receipt and storage of a DSI 30 at an SRU, the SRU Access Count Rate field resides on the SRU and is ready to be updated from the time a handle to the first marker is obtained (**storage at the SRU**).

Furthermore, Kenner even states that alternatively the DSI can be hosted by the PIM itself (**see Column 25, Lines 37-41**). In view of these arguments, the examiner notes that Kenner clearly teaches "***in response to providing said handle, track the on-going transmission from said first marker***".

Applicant also argues that Kenner does not teach obtaining tracking information relative to the first marker without terminating the handle. Applicant has also notes that DSIs are destroyed after creation, therefore Kenner does not teach obtaining tracking information relative to the first marker without terminating the handle. In further support of this argument, Applicant notes that the examiner asserts that the DSI tracks continuously and is not destroyed. Applicant also notes that the examiner agrees that if the DSI is destroyed, Kenner would not teach continuous tracking.

The examiner disagrees and again stresses that a DSI 30 can be created (**by PIM 22**) and stored at any SRU (**see Column 12, Lines 26-29**) or hosted by the PIM 22 itself (**see Column 25, Lines 36-41**). Kenner clearly teaches at Column 16, Lines 57-

59 that after a user has requested a video clip and the video clip has been transmitted, that tracking information is obtained by updating a counter. Clearly, the handle has not been terminated after the transmission information has been obtained, otherwise PIM 22 would obtain no tracking information.

The examiner also notes that Kenner further teaches that DSIs that are created/received at a SRU remain at the SRU to continually track a particular video clip being transmitted from the SRU. Note Column 18, Lines 54-65 for a user requesting secondary video information and when the request is received by PIM 22, the PIM 22 determines the location of the secondary video information **and either uses the previously created DSI 30 or it creates another DSI 30 and passes the location of the secondary videos to the DSI 30**. Clearly, Kenner does not destroy a DSI 30 that resides at an SRU. Applicant has stressed the destruction of a DSI 30 at Column 12, Lines 14-18, where Kenner states that the PIM creates a DSI 30 just prior to the video data download process, and destroyed immediately thereafter. The examiner notes that this passage is vague and notes that this destruction only takes place after creation at the PIM 22, while Kenner clearly teaches at Column 12, Lines 26-29 that a DSI 30 is created at a specific location (**which has been disclosed by Kenner at Column 18, Lines 54-65 that the DSI 30 is continually used**).

The examiner also notes that the claim limitations are broad and that tracking continuously, from the time of, and the on-going transmission from said first marker can all occur relative to a single transmission/download of a single video clip. Therefore, even if Column 12, Lines 14-18 restricted Kenner's invention (**which it does not**) to

creation of a DSI 30 and then destruction after video data download was complete, Kenner still clearly teaches tracking (**continuously, from the time a handle to the first marker is obtained and the on-going transmission from said first marker**) of a video clip transmission.

Applicant also argues that Kenner does not disclose calling a method that is different from the method that provides the data structure at any time after the data structure is provided without terminating the structure.

The examiner disagrees and notes that the PIM 22 maintains multiple databases that contain multiple handles (**see Column 14, Lines 1-57 for two databases (*audio-visual data index and audio-visual access list*) that contain multiple handles (*(Usage Count Rate) and (Access Rate)*)**). The PIM 22 clearly receives updated information (**from DSI 30**) and uses these different pieces of information to track SRU usage and maintain a proper number of video clips on each SRU (**see Column 16, Line 62 through Column 17, Line 21**). Therefore, Kenner clearly teaches calling a method that is different from the method that provides a data structure at any time after the data structure is provided, by teaching that several databases that are updated at different times of transmission (**updating the SRU access counter at Column 16, Lines 57-59, the SRU under-run counter at Column 16, Line 62 through Column 17, Line 11 and the usage information in the Audio-Visual Access List at Column 17, Lines 12-21**). Further note the examiner's rebuttal above for addressing that the data structure is not terminated.

4. Claims 17 and 28

Applicant argues that Kenner does not specify that the video clips are broadcasts. The examiner disagrees and notes that Kenner teaches the use of television broadcast equipment for receiving the video clips (**see Column 8, Lines 14-16 for using a television set top box and Column 21, Lines 12-14 for a headend communications interface**), therefore Kenner implicitly teaches receiving television broadcasts in a television broadcast environment.

5. Claims 18, 29 and 41

Applicant argues that Kenner does not specify that the video clips are broadcasts. The examiner disagrees and notes that Kenner teaches the use of television broadcast equipment for receiving the video clips (**see Column 8, Lines 14-16 for using a television set top box and Column 21, Lines 12-14 for a headend communications interface**), therefore Kenner implicitly teaches receiving television broadcasts in a television broadcast environment.

6. Claims 21 and 22

Applicant argues that the stored segmented video clips do not constitute a continuous data stream and that because the video clip is in storage the clip is not streaming. The examiner disagrees and notes that the claims do not require a streaming video clip and further notes that the claims are broad and only state a continuous data stream. The examiner notes that a video is continuous by nature because when it is displayed, it is not a single still image, it is a continuous stream of video information that a user watches, therefore by Kenner teaching a video clip that is viewed by a user, the video clip is inherently continuous.

7. Claims 23, 34 and 40

Applicant argues that if each segment includes both the video ID and index information, then it is respectfully submitted that the two alleged markers are not accessed separately. That is, if the handle to the index information is the location where the segment is stored, and the video ID and index information are all contained in the segment, then if the segment is accessed, both the video ID and the index information are accessed. Furthermore, merely accessing a clip from storage alone does not provide details about the downloading of a clip segment to a user terminal.

The examiner disagrees and notes that the PIM 22 clearly maintains information on all of the video clips with each having a specific [Video ID] and each video clip is represented in the PIM's databases by assigning a first marker [Video ID] and a second marker [Video ID]. Therefore, clearly a first handle (Access Rate), which represents

when a video transmission was used by an SRU to transfer a video clip to a user, and a second handle (Usage Count Rate), which represents each time a video clip was requested by a user, is separately accessed (**and relate to different portions of a data transmission**) to determine what video clips to store on particular SRUs. Also further note that video clip segmentation also applies to these tracking procedures at Column 32, Lines 33-35.

8. Claims 26 and 31-33

Applicant argues that any alleged counting within this data structure is not ongoing from the time the data structure is created.

In regards to the arguments, see the examiner's rebuttal under section 3 (**above**), which addresses how the tracking is on-going from the time the data structure is created.

9. Claim 27

Applicant argues that Kenner fails to teach that on-going tracking includes counting bits transmitted and elapsed time from the time when the first marker is transmitted.

The examiner disagrees and notes that Kenner discloses that the on-going tracking includes counting bits transmitted (**see Column 22, Lines 11-45 for the PIM**

64 maintaining information about all of the video clips, which includes the size of the file (number of bits) and the usage count, therefore, everytime a user accesses the video clip, the usage count is updated, and the in accordance with the size of the file (the number of bytes), everytime the usage count is updated, the number of bits (bytes that make up the file size) are inherently counted), and also discloses the on-going tracking including an elapsed time from the time when the first marker is transmitted (**see Column 27, Lines 54-61 for determining the elapsed time of a test packet**). Further note that Kenner also teaches that the PIM also separately stores usage information at Column 22, Lines 38-40, which tracks the historical frequency of a clip across days and hours, thereby determining an elapsed time (**time passed between each video clip access**) from the time of creation (**Column 22, Lines 34-35**).

10. Claim 30 and 42

Applicant argues that only the content provider uses the software tool to assign a video ID, the broadcast encoder does not set the video ID. The examiner notes that the broadcast encoder (**used by the content provider**) is being interpreted as the software tool, because the software tool is used to encode the broadcast. Therefore, Kenner clearly teaches both a content provider (**stated verbatim by Kenner**) and a broadcast encoder (**software tool discussed at Column 27, Line 64 through Column 28, Line 5**).

11. Claims 36-39

Applicant argues that any alleged counting within this data structure is not ongoing from the time the data structure is created.

In regards to the arguments, see the examiner's rebuttal under sections 1 and 3 (**above**), which addresses how the tracking is on-going from the time the data structure is created.

B. Are claims 12-18, 20-23, 25-34, and 36-42 anticipated under 35 U.S.C. § 102(e) by Kenner (U.S. Patent No. 5,965,716)?

Applicant argues that Echeita does not clearly disclose allowing the billing account system to access the ad agency reconciliation computer because the arrows in Figure 1 are unidirectional, only showing output to the billing account system 40.

The examiner disagrees and notes that the Billing Account System clearly is accessing unit 36's billing information when a connection is made using modem connection 44 (see Column 6, Lines 1-10), therefore billing information is clearly being accessed and processed by Esceita's billing system.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

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